

# STATE OF COLORADO

## DEPARTMENT OF REVENUE

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GIL-2007-10

Bill Ritter, Jr.  
Governor

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Executive Director

XXXXXXXXXXXXXX  
Attn: XXXXXXXXXXXX  
XXXXXXXXXXXXXX  
XXXXXXXXXXXXXX

December 4, 2007

Re: animal ear tag items, service fees

Dear XXXXXXXX,

This letter is in response to your letters to the Colorado Department of Revenue, dated June 21, 2007, re: taxability of [Company] products and services. We apologize for the time it has taken to respond to your inquiry.

### Issue

1. Does Colorado sales tax apply to the goods and services provided by your client?

### Background

Your client, [Company], is in the business of providing data collection and data management services to the food producing, processing, and purveying industries. [Company] provides four online subscription based systems: (1) [Product A] is a service that provides for the location identification of tagged animals; (2) [Product B] is a service that provides tracking of where the animal has been; (3) [Product C] is a service that provides for the verification of age, process, source, and movement of tagged animals; and (4) [Product D] is a data management tool that certifies traditional health processes and verifies age, source, and movement of individual cattle.

### Discussion

- 1) *Doing business in Colorado.*

You ask whether sales and/or use tax apply to the sale of a variety of products and services that are associated with the four services listed above. In order for a retailer to be subject to Colorado sales or use tax, the retailer must be "doing business in this state." §39-26-102(3), C.R.S.

(3) "Doing business in this state" means the selling, leasing, or delivering in this state, or any activity in this state in connection with the selling, leasing, or delivering in this state, of tangible personal property by a retail sale as defined in this section, for use, storage, distribution, or consumption within this state. This term includes, but shall not be limited to, the following acts or methods of transacting business:

- (a) The maintaining within this state, directly or indirectly or by a subsidiary, of an office, distributing house, salesroom or house, warehouse, or other place of business;
- (b) The soliciting, either by direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of

the newspaper, radio, or television advertising media, or by any other means whatsoever, of business from persons residing in this state and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this state for use, consumption, distribution, and storage for use or consumption in this state.

A number of federal court cases have limited the right of a state to impose on a retailer the obligation to collect state sales and use taxes. *Quill Corp. v North Dakota*, 504 US 298 , 112 S Ct 1904 , 119 L Ed 2d 91 (1992); *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). In general, these cases require that the retailer have substantial nexus with Colorado. In other words, a retailer must have some presence in the state, either directly, such as in the form of a store, or indirectly, such as through independent sales agents, and engage in regular, purposeful in-state sales activities specifically directed at in-state customers. *Tyler Pipe Industries, Inc. v. Wash. State Dept. of Revenue*, 483 U.S. 232, 250 (1987). For more information about this issue, see department publication FYI Sales 5 (sales tax information for out-of-state businesses).

You do not provide sufficient information for us to determine whether [Company] is doing business in this state. For example, you do not indicate whether the host servers are located in Colorado, whether you have sales representatives or agents in Colorado, whether training occurs in Colorado, or whether you have any other type of physical presence in Colorado.

If [Company] is doing business in Colorado and the sale of the product takes place outside of Colorado, then [Company] must open a business account with the Department (CR 100 – Business Registration Form) and collect and remit Colorado use tax. See, Retailer's Use Tax Return DR 0173. If [Company] is doing business in Colorado and the sale takes place in Colorado, then [Company] must remit sales tax on form DR 100. Tax forms are also available on our web site (go to Taxation > Forms > Businesses > Sales and Use Tax).

In addition to state sales and use tax, there are a number of state-administered city, county, and special district sales and use taxes. Cities and counties can elect to tax farm equipment (see response to item 1, below). For a list of these jurisdictions and whether they exempt farm equipment, see Department publication DRP 1002. There are also "home-rule" cities and counties which administer their own sales and use taxes. These are also listed on DRP 1002. You should contact those jurisdictions if you are doing business within their boundaries.

## *2) Taxability of goods and services provided by [Company].*

Assuming that [Company] is doing business in this state, I offer the following advice regarding the taxability of the products and services you list.

### *a) Identification Ear Tags.*

Colorado imposes sales and use tax on the sale of tangible personal property. §39-26-104(1)(a), C.R.S. These tags are tangible personal property and, therefore, taxable. Colorado does exempt these tags if they are used in a farm dairy operation for the production of raw milk. See §39-26-716(1)(c), C.R.S. (exemption applies to cow identification systems and transponders). There is no similar exemption for non-dairy farm operations. See, FYI Sales 75 (Farm Equipment Exemption). See, also, Special Regulation 40 (Services Enterprises) (service providers who also regularly sell tangible personal property, must register, collect and remit sales and/or use tax). Cities and counties can elect to tax farm equipment.

### *b) Identification Ear Tag Applicator (device used to apply the identification tag to an animal).*

Same as No. a.

### *c) Replacement Pins (replacement parts for the ear tag applicator).*

Same as response to No. a.

### *d) Online subscription charge for the four services listed above.*

It appears from the brief description you provided that these charges are for the sale of services, not for the sale of tangible personal property, and, therefore, are not taxable. See, Special Regulation 40 (Service Enterprises).

### *e) USDA Certificate Fee (a charge for a paper certificate certifying that USDA requirements have been met).*

Although a paper certificate is tangible personal property, the paper is incidental to the true object of this transaction, which is a service, and, therefore, is not taxable.

- f) *Audit Certification Fee (a consulting fee for verifying that a program will meet USDA PVP requirements).*

Same as response to No. d.

- g) *Custom Development Fee (consulting fees for development of custom reports/programs).*

Same as response to No. d.

- h) *Training Fees.*

Same as response to No. d.

Finally, the Department makes a good faith effort to provide accurate and complete answers to questions posed to it by taxpayers. However, the information and answers provided here are not binding on the Colorado Department of Revenue, nor do they replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having authority to bind the Department, has not formally reviewed and/or approved this response.

Respectfully,

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